

§217.143

the area described in §217.140(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The activities identified in §217.140(a) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §217.140(a) is limited to the following species and by the indicated method and amount of take:

(1) Level B Harassment:

(i) Cetaceans:

(A) Bowhead whale (*Balaena mysticetus*)—75 (an average of 15 annually)

(B) Gray whale (*Eschrichtius robustus*)—10 (an average of 2 annually)

(C) Beluga whale (*Delphinapterus leucas*)—100 (an average of 20 annually)

(ii) Pinnipeds:

(A) Ringed seal (*Phoca hispida*)—155 (an average of 31 annually)

(B) Bearded seal (*Erignathus barbatus*)—25 (an average of 5 annually)

(C) Spotted seal (*Phoca largha*)—25 (an average of 5 annually)

(2) Level A Harassment and Mortality: Ringed seal—25 (an average of 5 annually)

§217.143 Prohibitions.

Notwithstanding takings contemplated in §217.140 and authorized by a Letter of Authorization issued under §§216.106 and 217.148 of this chapter, no person in connection with the activities described in §217.140 may:

(a) Take any marine mammal not specified in §217.142(c);

(b) Take any marine mammal specified in §217.142(c) other than by incidental take as specified in §217.142(c)(1) and (c)(2);

(c) Take a marine mammal specified in §217.172(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal;

(d) Take a marine mammal specified in §217.172(c) if such taking results in an unmitigable adverse impact on the species or stock for taking for subsistence uses; or

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(e) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§216.106 and 217.148 of this chapter.

§217.144 Mitigation.

(a) When conducting the activities identified in §217.140(a), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 217.148 of this chapter must be implemented. These mitigation measures include but are not limited to:

(1) Ice-covered Season:

(i) In order to reduce the taking of ringed seals to the lowest level practicable, BP must begin winter construction activities, principally ice roads, as soon as possible once weather and ice conditions permit such activity.

(ii) Any ice roads or other construction activities that are initiated after March 1, in previously undisturbed areas in waters deeper than 10 ft (3 m), must be surveyed, using trained dogs in order to identify and avoid ringed seal structures by a minimum of 492 ft (150 m).

(iii) After March 1 of each year, activities should avoid, to the greatest extent practicable, disturbance of any located seal structure.

(2) Open-water Season:

(i) BP will establish and monitor, during all daylight hours, a 190 dB re 1 µPa (rms) exclusion zone for seals around the island for all activities with sound pressure levels (SPLs) that are expected to exceed that level in waters beyond the Northstar facility on Seal Island.

(ii) BP will establish and monitor, during all daylight hours, a 180 dB re 1 µPa (rms) exclusion zone for cetaceans around the island for all activities with SPLs that are expected to exceed that level in waters beyond the Northstar facility at Seal Island.

(iii) If any marine mammals are observed within the relevant exclusion zone, described in §217.144(a)(2)(i) or (a)(2)(ii), the activity creating the noise will shutdown or reduce its SPL sufficiently (*i.e.*, power down) to ensure that received SPLs do not exceed those prescribed SPL intensities at the affected marine mammal. The shutdown

or reduced SPL shall be maintained until such time as the observed marine mammal(s) has been seen to have left the applicable exclusion zone or until 15 minutes have elapsed in the case of a pinniped or odontocete or 30 minutes in the case of a mysticete without re-sighting, whichever occurs sooner.

(iv) The entire exclusion zones prescribed in §217.144(a)(2)(i) or (a)(2)(ii) must be visible during the entire 30-minute pre-activity monitoring time period in order for the activity to begin.

(v) BP shall employ a ramp-up technique at the beginning of each day's in-water pile driving activities and if pile driving resumes after it has ceased for more than 1 hour.

(A) If a vibratory driver is used, BP is required to initiate sound from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure shall be repeated two additional times before full energy may be achieved.

(B) If a non-diesel impact hammer is used, BP is required to provide an initial set of strikes from the impact hammer at reduced energy, followed by a 1-minute waiting period, then two subsequent sets.

(C) If a diesel impact hammer is used, BP is required to turn on the sound attenuation device for 15 seconds prior to initiating pile driving.

(vi) New drilling into oil-bearing strata shall not take place during either open-water or spring-time broken ice conditions.

(vii) All non-essential boats, barge, and air traffic will be scheduled to avoid periods when bowhead whales are migrating through the area where they may be affected by noise from these activities.

(3) Helicopter flights to support Northstar activities must be limited to a corridor from Seal Island to the mainland, and, except when limited by weather or personnel safety, must maintain a minimum altitude of 1,000 ft (305 m), except during takeoff and landing.

(4) Additional mitigation measures as contained in a Letter of Authorization issued under §§216.106 and 217.148 of this chapter.

(b) [Reserved]

§217.145 Measures to ensure availability of species for subsistence uses.

When applying for a Letter of Authorization pursuant to §217.147 or a renewal of a Letter of Authorization pursuant to §217.149, BP must submit a Plan of Cooperation that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammal species or stocks for taking for subsistence uses. A plan shall include the following:

(a) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding timing and methods of operation;

(b) A description of what measures BP has taken and/or will take to ensure that the proposed activities will not interfere with subsistence whaling or sealing; and

(c) What plans BP has to continue to meet with the affected communities to notify the communities of any changes in operation.

§217.146 Requirements for monitoring and reporting.

(a) BP must notify the Alaska Regional Office, NMFS, within 48 hours of starting ice road construction, cessation of ice road usage, and the commencement of icebreaking activities for the Northstar facility.

(b) BP must designate qualified, on-site individuals, approved in advance by NMFS, to conduct the mitigation, monitoring, and reporting activities specified in the Letter of Authorization issued under §§216.106 and 217.148 of this chapter.

(c) Monitoring measures during the ice-covered season shall include, but are not limited to, the following:

(1) After March 1, trained dogs must be used to detect seal lairs in previously undisturbed areas that may be potentially affected by on-ice construction activity, if any. Surveys for seal structures should be conducted to a minimum distance of 492 ft (150 m) from the outer edges of any disturbance.